

STATEMENT OF WILLIAM BRYAN
TO THE SUBCOMMITTEE ON GENERAL FARM COMMODITIES
AND RISK MANAGEMENT

February 28, 2006

My name is William Bryan. I am here on behalf of Missouri Attorney General Jay Nixon. Attorney General Nixon regrets that he is unable to be here this morning, but he wanted me to welcome the subcommittee members to Jefferson City and thank them for their time and concern.

On November 23, 2005, Attorney General Nixon first questioned the impact that an artificial spring rise may have on the crop insurance coverage paid for by Missouri farmers. The specific question we asked was, "will the Risk Management Agency exclude from coverage losses caused or contributed to by the 'spring pulses' described in the Corps' draft Annual Operating Plan for 2006?" Surprisingly, despite years of river management studies by the federal government, apparently no responsible agency had ever contemplated this important question. Without Attorney General Nixon's initiative, it is quite possible that the agencies never would have considered how the Corps' proposal disrupts the safety net for our farmers.

There are three important considerations this committee should take into account.

First, the spring pulses are expressly intended to mimic nature. They should be considered "natural occurrences" since that is their purpose.

Second, if we assume that the spring pulses are not "natural occurrences" because they are caused by intentional releases of water from federal dams, then it is simply wrong for the federal government to impose this uninsured risk on our farmers. If the dams did not exist, our farmers' losses would be covered by crop insurance.

Third, this misbegotten policy is a problem for the farm community even if there is no actual flood.

As part of our legal evaluation of the Corps' plan, we reviewed the standard provisions of the basic crop insurance policy. In our opinion, the basic provisions should be construed to cover losses caused or contributed to by the Corps' "spring pulses." After all, the very purpose of the "spring pulse" plan is to emulate natural events. When the purpose of a federal action is to imitate a natural occurrence to satisfy the Endangered Species Act, it should be regarded as a natural occurrence for crop insurance purposes. Although there is disagreement over whether the Corps' plan truly does that—a question for another day—given the RMA's mission to preserve and strengthen the economic stability of America's agricultural producers through sound risk management, we were confident that the RMA would interpret the basic provisions and the law to cover any losses that may arise.

While our confidence was boosted by the fact that the Corps' intent was to mimic nature, it was further bolstered by the fact that this was a federal initiative sponsored by the Corps and the U.S. Fish & Wildlife Service. Surely the left hand of the federal government wouldn't deny insurance

coverage for losses caused by the right hand's efforts to recreate a natural event on the grounds that the event was not natural. Of course, our optimism was misplaced. The RMA expressly rejected our interpretation and told us that any losses caused or contributed to by the "spring pulses" would not be covered by crop insurance.

The Corps could have acted swiftly to protect the farm community from this unintended consequence of its plans. Instead of taking responsible action to right this wrong, however, the Corps tells us the risk of flooding is small. Nevermind that the Corps has not yet published a single study that proves this rank speculation. Most importantly, actual flooding isn't our only concern. The mere prospect that uninsured losses could occur has the potential to affect a farmer's ability to get credit, and that affects his ability to farm. Even without the slightest flooding, the Corps' emasculation of the crop insurance program could take land out of production and reduce farm income. At a minimum, it will make farming even more financially difficult, especially for our smaller producers.

Today, despite 15 years of study, the Corps has not taken the potential consequences on the farm safety net into account. It has carefully studied water conservation, power generation, navigation, and even minnow reproduction in the reservoirs, but it has never adequately considered the impacts of its operations on agriculture, and this failure is but one more example of the Corps' institutional blind spot regarding agriculture. Accordingly, although we remain convinced that the spring pulse plan is wrong for many reasons, the Corps certainly should not implement that plan without mending the farm safety net. And it is my understanding that the Corps has no intention of addressing this problem.

If, as these federal agencies contend, the spring pulse experiment is an action under the Endangered Species Act to benefit the Nation as a whole, then the burden should be borne by the Nation, not by river bottom farmers alone. The best way to do that is to treat damages caused by a federal experiment intended to replicate natural conditions as losses due to "natural occurrences" under the crop insurance basic provisions. Until agreement can be reached on that interpretation – which seems unlikely – or suitable legislative changes made, the Corps should follow its master manual and let Mother Nature provide the spring rise.